



Department of Planning, Housing, & Community Development

Mayor, Richard C. David
Director, Dr. Juliet Berling

STAFF REPORT

Date: October 15, 2015
Subject: 494 Court St; Area Variance
Applicant: Up State Tower Co., LLC
Tax ID #: 161.23-3-6
Case: 2015-20

A. SUMMARY:

The applicant seeks an Area Variance to construct a 155' high telecommunications tower where 65' is the maximum in the C-1, Service Commercial District. The proposed tower will be located at the rear of property to minimize visual impact. Lighting is not proposed as the tower is unmanned. The subject parcel is a vacant, 7,200 sq ft lot, located on Court Street in between Fairview and Berwick Avenues.

This case will be reviewed by the Planning Commission on 11/09/2015.

B. PREVIOUS ZONING BOARD & PLANNING COMMISSION ACTIVITY

457 Court Street: In 1990, the Zoning Board of Appeals granted use and area variances to Stephen Harris and Jeff Feinberg to convert an existing building to a health club.

499 Court Street: In 2002, the ZBA approved area variances to construct a 12' by 72' plant stand in 2002 with the condition that it be removed when the reconstruction of Court Street is completed.

6 Milford Street: In 1989, the ZBA denied area variances for total and rear yard setback requirements and maximum size of an accessory building to construct a 10 by 40-foot addition to an existing garage.

5 Fairview Avenue: In 1999, the ZBA granted use and area variances to allow a used car business.

C. ENVIRONMENTAL IMPACT

The applicant's proposal is a SEQR **UNLISTED** Action. The Planning Commission may be the lead agency to determine any environmental significance.

Motion to determine what type of action:

- a. Type I
- b. Type II
- c. **Unlisted**

2. Determine Lead Agency and other involved agencies.
3. Motion to schedule a public hearing.
4. After the Public Hearing, Determination of Significance. (See EAS Part 2 & Part 3)

| | NO, OR SMALL IMPACT MAY OCCUR | MODERATE TO LARGE IMPACT MAY OCCUR |
|--|--|---|
| Will the proposed action create a material conflict with an adopted land use plan or zoning regulations? | X | |
| Will the proposed action result in a change in the use or intensity of use of land? | | |
| Will the proposed action impair the character or quality of the existing community? | | |
| Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)? | X | |
| Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway? | X | |
| Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities? | X | |
| Will the proposed action impact existing: <ul style="list-style-type: none"> A. public / private water supplies? B. public / private wastewater treatment utilities? | X | |
| Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources? | X | |
| Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)? | X | |
| Will the proposed action result in an increase in the potential for erosion, flooding or drainage Problems? | X | |
| Will the proposed action create a hazard to environmental resources or human health? | X | |

F. STAFF COMMENTS

1. Undesirable Change

- a. The character or the particular neighborhood is commercial. The applicant seeks to build in a service commercial district. The tower will be located in the rear of the property next to the tree line in order to minimize visual impacts.

2. Reasonable Alternative

- a. In order to provide top-quality service, it is necessary to install the most up-to-date towers. Additionally, the propagation study has determined this is the area, which needs service the most.

3. Substantial Request

- a. The applicant is asking to build a tower that is more than twice the height of the actual limit.

4. Self-created Hardship

- a. The proposed height of the tower is what is necessary to cover the gap in cellular coverage. It is not a choice on the part of the applicant.

5. Physical and Environmental Conditions

- a. The Board should consider the visual impact of the tower on Court Street, as well as the visual impact on the residential neighborhood to the north.

H. ENCLOSURES

Enclosed are copies of the site plan, the application, site photos, and section 410-42 of the City Zoning Ordinance which discusses the standards for telecommunications facilities.

§ 410-42. Telecommunications facilities and towers.

A. Intent. The City Binghamton recognizes the increased demand for wireless communications transmitting facilities and the need for the services they provide. Often these facilities require the construction of a communications tower and/or similar facilities. The intent of this section is to regulate the location, construction and modification of the telecommunications facilities in accordance with the guidelines of the Telecommunications Act of 1996 and other applicable laws by:

- (1) Accommodating the need for telecommunications towers/antennas while regulating their locations and number in the community.
- (2) Minimizing adverse visual impacts of these tower/antennas through proper siting, design and screening.
- (3) Preserving and enhancing the positive aesthetic qualities of the natural environment and current development in the City of Binghamton.
- (4) Providing for the health, safety and welfare of the community by avoiding potential damage or other negative impact to adjacent properties from power failure, failing ice, etc., through proper siting and engineering.
- (5) Requiring the joint use of towers when available and encouraging the placement of antennas on existing structures to minimize the number of such structures in the future.

C. Approvals and bulk requirements. No telecommunications facility shall be sited, located, constructed, erected or modified without the issuance of a building permit, tower special use permit and a Series A site plan approval, and such other permits or approvals as are prescribed by this chapter.

2) Noncollocated/New structure antennas.

(a) A noncollocated or new structure antenna is permitted with the issuance of a tower special use permit, a Series A site plan review approval from the Planning Commission and a building permit. No application for a noncollocated or new structure antenna shall be considered complete unless and until the applicant shall have submitted a report that establishes to the satisfaction of the City of Binghamton Planning Commission the following:

- [1] That the applicant is required to provide service to locations which it is not able to serve through existing facilities which are located either within or outside of the City of Binghamton, showing the specific locations and/or areas the applicant is seeking to serve.
- [2] The report shall set forth an inventory of existing facilities and/or structures, within or outside of the City, which might be utilized or modified in order to provide coverage to the locations the applicant is seeking to serve and shall include a report on the possibilities and opportunities for collocation as an alternative to a new site. The applicant must demonstrate that the proposed facility cannot be accommodated on any such existing facility or structure either within or outside of the City of Binghamton due to one or more of the following reasons:
 - [a] The proposed equipment would exceed the existing reasonably potential structural capacity of existing facilities or structures within or outside of the City, considering existing and planned use for those facilities or structures.
 - [b] The existing or proposed equipment would cause interference with other existing or proposed equipment that could not reasonably be mitigated or prevented.

- [c] Said existing facilities or structures do not have space on which the proposed equipment can be placed so it can function effectively and reasonably, and/or the applicant has not been able, following good faith efforts, to reach an agreement with the owner(s) of such facilities or structures.
- [d] Other reasons which make it impractical to locate or place the proposed equipment on said facilities or structures.

(b) Bulk requirements. In all zoning districts new or relocated towers and antennas shall be set back from all property lines a minimum distance equal to their height (measured from their base). The Planning Commission may require an additional setback area in the case of guy wires, taking into consideration the length of the guy wires and the location of ground anchors.

(1) All applications for telecommunications facilities in all zoning districts shall comply with the requirements of the State Environmental Quality Review Act (SEQRA).

D. Application for tower special use permit.

(1) Application required. All applicants shall make a written application for special use permit and Series A site plan approval to the City of Binghamton Planning Commission, through the City of Binghamton Planning Department.

(2) Said application shall include:

- (a) A completed tower special use permit application form. In addition to the requirements set forth herein, all applications shall be processed in accordance with the requirements of § 410-40 of this chapter generally applicable to special use permits. The application shall be accompanied by the payment of the tower special use permit application fee as set from time to time by City Council. In addition to the tower special use permit application fee, the applicant shall also be responsible for all reasonable costs incurred by the City in reviewing and analyzing an application, including but not limited to any engineering or technical reports or studies submitted by the applicant relative to its application and any related legal fees.
- (b) A special use permit application form, including long-form environmental assessment form (EAF). The application shall not be deemed complete unless accompanied by the propagation studies and search ring analysis described in Subsection D(2)(d) and (e) of this section.
- (c) Site plan, in the form and content acceptable to the City, prepared to scale and in sufficient detail and accuracy. In addition to the site plan requirements set forth in § 410-47, the site plan shall include:
 - [1] The exact location of the proposed tower, together with guy wires and ground anchors, if applicable, and any accessory structures.
 - [2] The maximum height of the proposed tower and antennas.
 - [3] A detail of tower type (monopole, guyed, freestanding or other).
 - [4] The color or colors of the tower.
 - [5] The location, type and intensity of any lighting on the tower and antennas.
 - [6] A survey, showing the boundary of the property and any easements, and a topographical map of the property with contour lines not exceeding two-foot intervals.
 - [7] Proof of ownership of the land by the applicant or the landowner's consent if the applicant will not own the property. A copy of the final lease agreement, plus any amendments thereto, must also be provided if the applicant will not own the property.

- [8] The location of all current and proposed structures on the property and all structures on any adjacent property within 50 feet of the property lines, together with the distance of these structures to the tower and antennas.
 - [9] Identification of adjacent landowners.
 - [10] The location, nature and extent of any proposed fencing and landscaping or screening. Existing on-site vegetation shall be preserved to the maximum extent possible.
 - [11] The location and nature of proposed utility easements and access roads, if applicable. The applicant must demonstrate that all private access roads will be maintained in order to ensure access by emergency vehicles on a year-round basis.
 - [12] Building elevations of accessory structures or immediately adjacent buildings.
 - [13] A visual study showing where, within a two-mile radius, any portion of the proposed tower/antenna could be seen.
- (d) Before-and-after propagation studies prepared by a qualified radio frequency engineer (signed and sealed by a licensed professional engineer) demonstrating existing signal coverage resulting from the proposed telecommunications facility.
- (e) Search ring analysis.
- [1] A search ring analysis prepared by a qualified radio frequency engineer (signed and sealed by a licensed professional engineer) and overlaid on an appropriate background map demonstrating the area within which the telecommunications facility needs to be located in order to provide proper signal strength and coverage to the target cell.
 - [2] The applicant must be prepared to explain to the City of Binghamton Planning Commission how and why it selected the proposed site, discuss the availability (or lack of availability) of a suitable structure, within the search ring, which would have allowed for collocated antenna(s), and to what extent the applicant explored locating the proposed tower and antennas in a more desirable use district. Proof of correspondence with other telecommunications companies concerning collocation shall be part of this requirement.
- (3) The City of Binghamton Planning Commission, upon reviewing the application, may request reasonable additional visual, aesthetic and site information, as it deems appropriate on a case-by-case basis. Such additional information may include, among other things, visual impact statements, enhanced landscaping plans, line-of-sight drawings and/or visual simulations from viewpoints selected by the City staff.
- (4) For sites in close proximity to significant historical sites or important preservation/conservation areas, the City will request additional site plans and tower special use permit requirements. These requirements can include specially designed towers, additional screening, greater setbacks and improved landscaping. Siting in these areas should be avoided to the maximum extent possible.

E. Telecommunications facility permit standards.

- (1) The following criteria will be considered by the City prior to the approval/denial of a request for a tower special use permit. The criteria listed may be used as a basis to impose reasonable conditions on the applicant. Tower special use permits are not assignable and are not transferable, except upon approval of the Planning Commission.
- (2) The City may express a preference for an alternative site(s) and/or that the proposed telecommunications facility be located in a higher-intensity-use district or on higher-intensity-use property, provided that there is a technologically feasible and available location. A guideline for the City's preference, from most desirable to least desirable zoning district/property, is as follows:

- (a) Property with an existing structure suitable for collocation.
 - (b) Municipal or government-owned property.
 - (c) Industrial, Heavy (I-3), Industrial, Light/Medium (I-2), Urban Business Park (I-1), Downtown Business (C-2), Service Commercial (C-1), Neighborhood Commercial (C-4), Medical (C-3), Neighborhood Office (C- 5), and Limited Neighborhood Commercial (C-6).
 - (d) Residential Multi-Unit Dwelling (R-3), Residential One- and Two-Unit Dwelling (R-2), and Residential One & Two Family.
 - (e) Sites which are in close proximity to significant historic sites and/or important preservation/conservation areas.
- (3) Any request by the City for information or technical analysis on a preferred alternate site shall be provided by the applicant at its sole cost and shall not unreasonably delay the application.
- (4) Aesthetics. Telecommunications facilities shall be located and buffered to the maximum extent that is practical and technologically feasible to help ensure compatibility with surrounding land uses. In order to minimize any adverse aesthetic effect on neighboring residences to the extent possible, the City of Binghamton Planning Commission may impose reasonable conditions on the applicant, including, but not limited to, the following:
- (a) Tower height, including antennas, and design are matters of primary public concern. The Board may require a monopole or guyed tower (if sufficient land is available to the applicant) instead of a freestanding tower. Monopoles are a preferred design. The Board may impose reasonable restrictions and/or conditions on height. For example, the Board may reasonably determine that adverse impact upon the community will be best mitigated by requiring the applicant to construct multiple towers of lower height at several different locations to meet the applicant's demonstrated service coverage requirement(s) or that the tower height be reduced in the future if the applicant is unable to demonstrate a continuing need for the approval height in light of changes in the applicant's service coverage needs or technological advances.
 - (b) The Board may require reasonable landscaping consisting of trees or shrubs to screen the base of the tower and antennas and/or to screen the tower and any accessory structure or buildings to the extent possible from adjacent residential property. Existing on-site trees and vegetation shall be preserved to the maximum extent possible.
 - (c) The Board may require the applicant to show that it has made good-faith efforts to collocate on existing towers or other available and appropriate structures and/or to construct new towers near existing towers in an effort to consolidate visual disturbances. However, such request shall not unreasonably delay the application.
 - (d) The Board may require the tower and any antenna to be camouflaged; for example the Board may reasonably require the tower and antenna to appear to be a flagpole or tree.
 - (e) The type of finish, color and lighting shall be subject to City and/or Federal Aviation Administration (FAA) approval. The City may require lights to be shielded to minimize ground visual impact.
 - (f) No tower shall contain any signs or advertising devices. Notwithstanding the foregoing, the Board may require appropriate signage indicating ownership of the facility and phone numbers to call in case of emergency.
 - (g) The applicant must submit a copy of its policy regarding collocation on the proposed tower with other potential future applicants. Such policy should allow collocation under the following conditions:

- [1] The new antenna(s) and equipment do not exceed structural loading requirements, interfere with City space used or to be used by the applicant or pose any technical or radio frequency interference with existing equipment.
- [2] The party desiring to collocate pays the applicant an appropriate and reasonable sum to collocate.
- [3] The party desiring to collocate has a similar policy of collocation for the applicant.
- (h) All other uses ancillary to the antenna and associated equipment (including a business office, maintenance depot, vehicle storage, etc.) are prohibited from the site unless otherwise permitted in the zoning district in which the facility is located.

(5) Radio frequency; inspections.

- (a) The City of Binghamton Planning Commission shall impose a condition on the applicant that the communications antenna will be operated only at Federal Communication Commission (FCC) designated frequencies and power levels and/or Environmental Protection Agency (EPA) technical exposure limits and may periodically require that the applicant provide competent documentation to support that maximum allowable frequencies, power levels and exposure limits for radiation will not be exceeded.
- (b) Unless otherwise preempted by federal or state law, the telecommunications facility shall be inspected every two years, at the applicant's expense, for radio emissions, and a copy of the report shall be promptly delivered to the Building Inspector. A licensed professional engineer specializing in electrical engineering with expertise in radio communications facilities shall perform radio emission inspections. The radio emission inspection shall describe the power density levels of the electromagnetic energy generated from the facility, including the cumulative effects of collocated antennas. In the event that the radio emission inspection indicates that the electromagnetic energy generated from the facility is above the allowable limits stated with applicable FCC or ANSI standards or other applicable federal or state guidelines in effect at the time of inspection, the applicant shall cease all use of the facility until such time as it proves, to the satisfaction of the Building Inspector or pertinent City consultant, that the power density levels of the electromagnetic energy to be generated at the facility are below the applicable standards.

(6) Traffic, access, and safety.

- (a) A road turnaround and one parking space shall be provided to assure adequate year-round emergency and service access. Maximum use of existing roads, public or private, shall be made. The use of public roadways or road rights-of-way for the siting of a tower or antenna(s) accessory structures is prohibited.
- (b) All towers and ground anchors, if applicable, shall be enclosed by a fence not less than eight feet in height and otherwise sufficiently protected from trespassing or vandalism.
- (c) The applicant must comply with all applicable state and federal regulations, including, but not limited to, FAA and FCC regulations, and from time to time may be required to provide certification of such compliance.
- (d) All towers and antennas shall include anti-climbing devices for a minimum of 25 feet extending above ground level.

(8) Structural safety.

- (a) During the application process and after construction of the tower, the applicant shall provide a certification from a qualified New York State licensed professional engineer, certifying that the tower and antennas meet applicable New York State and ANSI structural safety standards.